

G603WILS

Sentence

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

UNITED STATES OF AMERICA,

V.

16 CR 170 (JGK)

DERRICK WILLIAMS,

Defendant.

New York, N.Y.
June 24, 2016
10:45 a.m.

Before:

HON. JOHN G. KOELTL,

District Judge

APPEARANCES

PREET BHARARA

United States Attorney for the
Southern District of New York

ANDREW BEATY

Assistant United States Attorney

JOSHUA L. DRATEL

WHITNEY G. SCHLIMBACH

Attorneys for Defendant

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1 THE DEPUTY CLERK: United States of America v. Derrick
2 Williams.

3 MR. BEATY: Good morning. Andrew Beaty for the
4 government.

5 MR. DRATEL: Good morning. Joshua Dratel for
6 Mr. Williams who is seated beside me, and Whitney Schlimbach
7 who is an associate in my office.

8 THE COURT: Good morning. I received the presentence
9 report prepared May 3, 2016, revised May 31, 2016, together
10 with the sentencing recommendation and the addendum dated
11 May 31, 2016.

12 I received the defendant's submission dated June 10,
13 2016, the government's submission dated June 15, 2016, and the
14 defense submission dated June 23, 2016.

15 Let me ask at the outset, is there any dispute that
16 the appropriate amount of restitution that I should find is
17 \$291,550 payable to the New York City Human Resources
18 Administration, and the amount of forfeiture that I should find
19 is \$437,325? Because I can tell you if there is a dispute,
20 then I'll have a Fatico hearing.

21 MR. DRATEL: Give me one moment, your Honor.

22 THE COURT: Sure.

23 (Defendant conferring with his counsel)

24 MR. DRATEL: No, your Honor.

25 THE COURT: Okay. So, no dispute, no request for a

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1 Fatico hearing.

2 MR. DRATEL: That's correct, your Honor.

3 THE COURT: I agree, by the way, that I should impose
4 a payment schedule, which is by virtue of the payment schedule
5 itself, a reasonable payment schedule in terms of what the
6 defendant could reasonably pay over time, even though, that
7 reasonable payment schedule would not pay off the amount of
8 restitution. And in fact, under the way in which the statute
9 works, that would not be uncommon.

10 So that the defendant would be paying a reasonable
11 amount toward restitution, but the restitution would not be
12 eventually paid off. Okay.

13 By the way, I really appreciated the thoroughness of
14 the parties' submissions. They showed a great deal of
15 thoughtful work.

16 Mr. Dratel, have you reviewed the presentence report,
17 the recommendation, and the addendum, and discussed them with
18 the defendant?

19 MR. DRATEL: I have your Honor.

20 THE COURT: Do you have any objections?

21 MR. DRATEL: None that I think were not incorporated
22 into the presentence report.

23 THE COURT: Okay. I'll listen to you for anything you
24 would like to tell me in connection with sentence, any
25 statement you'd like to make, anything at all you'd like to

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1 tell me.

2 MR. DRATEL: Thank you, your Honor. I know the Court
3 has read the materials so I'm not going to revisit them. Just
4 touch on a couple of things, some information I just received
5 from Mr. Williams today and some other issues that may not have
6 been fleshed out entirely in the papers.

7 In terms of Mr. Williams' physical condition, just to
8 give you a sense of what -- and I know the Court is experienced
9 in this, but in terms of this particular case just sort of the
10 roulette of being in MCC and medical treatment, is that he
11 finds out today as he's being brought here, that today is the
12 day he's supposed to go back to the hospital because they're
13 supposed to fit him with a different boot, because the boot he
14 has for his broken ankle is not the right boot. So it's
15 supposed to be changed, so today is the day. We don't know
16 when the next day will be that he'll get that.

17 He's had a flood in his cell for the past few days
18 which has covered the floor with water, which makes walking
19 around in crutches that much more precarious. He's fallen.
20 So, he's supposed to go back and get X-rays. He's got swelling
21 in his leg that the doctors don't believe is a good sign, so he
22 obviously is going to need this continual treatment for the
23 broken ankle he has suffered in MCC.

24 With respect to collateral consequences, some of them
25 actually do attach to this conviction, in particular one being

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1 food stamp and health care programs. The fraud that is related
2 to those programs gives those agencies the option of a
3 permanent bar, and certainly a bar that would make some of the
4 other collateral consequences that much more difficult. In
5 other words, the Social Security consequences that result from
6 any conviction or from prior convictions, without all those
7 other potential safety net options, that becomes more severe.
8 Same thing is true with respect to employment, restrictions and
9 all of that.

10 As you narrow the ability of the defendant upon his
11 reentry to have some level of financial subsistence going
12 forward, that creates a crisis, as all of those particular
13 components are then removed from the constellation of possible
14 financial basis for financial subsistence.

15 With respect to the financial penalties, the
16 government's proposed restitution order has a 20 percent gross
17 monthly income payment schedule for restitution. I think
18 that's --

19 THE COURT: I would impose 10 percent.

20 MR. DRATEL: Okay. Thank you, your Honor. I think
21 that's standard, even though, you know, so that's the standard.

22 With respect to Mr. Williams' background, and it's
23 very hard to determine chicken and egg and all of that in terms
24 of whether someone with his background, unfortunately, is
25 certain boxes that we see on a regular basis are checked off in

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1 his background. Parental substance abuse, alienation from
2 that, and just the series of mistakes that he has made, no
3 question. And this is the most recent in that series. And he
4 is going to do more jail time for it.

5 I think the approach that we take in our papers is
6 that he's already had a significant jail term. That doesn't
7 seem to be the answer. And a significant jail term -- there
8 has to be a better solution for this. This goes also to the
9 consecutive versus concurrent part of it. I'll talk about that
10 a little bit. But I just think that there are limits to what
11 jail accomplishes. Not just for Mr. Williams, but for the rest
12 of us and his family.

13 And there is a trend, I think, among particularly
14 people with a lot of authority, Supreme Court justices,
15 attorney generals, the president, who recognize, and I know
16 members of the court as well, have come to recognize that not
17 every problem is the nail for the hammer. You know.

18 So, another aspect of this case is general deterrence
19 that the government raised. No question, no one is here who is
20 not involved in this case. No one is going to know. No one
21 cares. It doesn't matter. And I think in our reply papers,
22 sort of -- the concept of general deterrence in a case like
23 this does not have any currency. I just, there is no way to
24 measure it. There is no way to measure why Mr. Williams would
25 get X-amount of general deterrence and someone else would get

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1 Y. There is no standard. There is no quantification. There
2 is no objectivity to it, and I don't think it is a factor in
3 this particular case. This is his first federal case -- I'm
4 sorry. Oh, I thought --

5 THE COURT: No. General deterrence is always a
6 problematic factor in sentencing, because there is something
7 not quite right about using an individual defendant in order to
8 affect other people, as opposed to the individual defendant. I
9 appreciate that general deterrence is in fact an acceptable aim
10 of sentence, but it is always problematic.

11 MR. DRATEL: Thank you, your Honor. This is also his
12 first federal case. And federal cases are different than state
13 cases, and the entire federal system in my experience has a
14 much more tonic effect on a defendant's evaluation of their
15 lives and the prospects for their own life and their families'
16 lives going forward. Because of the gravity of the way cases
17 are treated here, because the stakes involved, and the
18 potential for more significant punishment, and I think that
19 that does have an impact on people, particularly people of
20 Mr. Williams' age, as he gets into an age area where all the
21 statistical information establishes recidivism does decline.
22 He's right at that age now.

23 With respect to consecutive versus concurrent or
24 versus no preference at all, I think it would -- I just think
25 that for the reason we put in our reply, it really should be

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1 left up if the Court is -- rather than the Court exercise it,
2 leave it up to the state judge to decide what's going to be,
3 with respect. Obviously, we want it concurrent just to make
4 sure he doesn't do all that additional time. Because right
5 now, he's not going to start serving his federal sentence until
6 the Court imposes judgment, because he's here as a primary
7 custody New York State sentence. So, he could actually do more
8 than what his state sentence has been, because he's in custody
9 this long. He can do less. The Court could be constrained by
10 mandatory minimums because of the nature of the case there,
11 because the nature of his record.

12 Queens is a difficult -- from my own experience,
13 Queens is not an easy jurisdiction for certain plea agreements.
14 They generally have a policy about timing and how far down
15 they'll go. So all of these things may affect a state court
16 judge, and may actually affect the orderly process of a state
17 case.

18 THE COURT: What is the maximum term that he's facing
19 on the state charges?

20 MR. DRATEL: I don't know, your Honor. But I do know
21 that for a gun charge it would be a minimum of a year.

22 THE COURT: I'm sorry?

23 MR. DRATEL: For a gun charge it would be a minimum of
24 a year but he also has a predicate violent conviction which
25 could raise that. It depends on -- I'm sorry.

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(Defendant conferring with his counsel)

MR. DRATEL: It's 15 to life, your Honor, is the maximum.

THE COURT: Okay.

MR. DRATEL: And --

THE COURT: This is not a case where the federal sentence dwarfs the possible state sentence.

8 MR. DRATEL: No, your Honor, but the question then
9 becomes, to make it consecutive or concurrent is if a sentence
10 in the state court is in excess of the federal sentence, is
11 that extra time going to be rehabilitative or is it going to be
12 useful, is it going to accomplish anything, other than perhaps
13 adding to either the state or federal budget problem.

14 THE COURT: I've always thought that if there is a yet
15 undetermined sentence, it's the second judge who should make
16 the determination of consecutive or concurrent, because there
17 are determinations with respect to, for example, what total
18 amount of prison is appropriate for purposes of deterrence for
19 the defendant, a determination that the first sentencing judge
20 simply doesn't know. Can't know.

21 MR. DRATEL: Yes. And I guess also the last thing I
22 would say, just sort of procedural things, substance abuse
23 obviously has been an issue in Mr. Williams' life, so an RDAP
24 recommendation for programming we think would be appropriate.
25 And as far as designation, we're in a little bit of a dilemma

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1 because I think it is actually, you know, there's a question of
2 continuity of care, making sure he gets back to the hospital.

3 But I don't think -- I don't think that would be after the
4 designation process. If the designation process goes by the
5 ordinary amount. I would hope he would stay at MCC and not go
6 to MDC, so that would not interfere with the schedule or the
7 particular hospital that he goes to, because the continuity of
8 care I think, given the issues that he's experienced thus far,
9 is an important factor.

10 So, all of that put together, your Honor, is at the
11 very worst, the bottom of the guidelines, but we think below
12 the bottom of the guidelines, would accomplish the same, and
13 the incremental effect of a few months here or a few months
14 there should be weighed in the context of sufficient but not
15 greater than necessary. There is really no basis for saying
16 they would be necessary rather than sufficient. So that's why
17 we ask for a sentence below the guidelines.

18 Thank you, your Honor.

19 THE COURT: Thank you, Mr. Dratel. Mr. Williams, have
20 you reviewed the presentence report, the recommendation, and
21 the addendum and discussed them with your lawyer?

22 MR. DRATEL: Your Honor, may he remain seated?

23 THE COURT: Sure.

24 MR. DRATEL: Because of his ankle.

25 THE DEFENDANT: Yes, sir, your Honor.

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1 THE COURT: Do you have any objections?

2 THE DEFENDANT: Excuse me? I didn't hear you, sir.

3 THE COURT: I'm sorry?

4 THE DEFENDANT: I didn't hear you, sir.

5 THE COURT: Do you have any objections?

6 THE DEFENDANT: No, sir.

7 THE COURT: I'll listen to you for anything you want
8 to tell me in connection with sentence, any statement you'd
9 like to make, anything at all you'd like to tell me.

10 THE DEFENDANT: Yes, sir. I'd like to apologize for
11 all my wrongdoings. I'd like to apologize for whoever I may
12 have hurt and the crimes I committed. And I just pray to God
13 for forgiveness, and I just hope my family will still have
14 faith in me after all this is said and done. That's it, your
15 Honor.

16 THE COURT: All right. Thank you.

17 Mr. Beaty, has the government reviewed the presentence
18 report, the recommendation and the addendum?

19 MR. BEATY: Yes, your Honor.

20 THE COURT: Does the government have any objections?

21 MR. BEATY: No, your Honor.

22 THE COURT: Do you have a proposed restitution order
23 for me?

24 MR. BEATY: Your Honor, I submitted that to the Court
25 in advance. I don't believe I have a hard copy here with me.

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1 But I can certainly bring a hard copy to chambers immediately
2 after.

3 THE COURT: Was the proposed restitution order one
4 that was agreed to by the defendant in terms of form?

5 MR. BEATY: It was -- in terms of form it was not
6 discussed with the defendant. As the Court noted and as
7 Mr. Dratel noted, I believe the percentage differs from what
8 the Court intends to impose. So I'm happy to make that change
9 and bring a revised proposed order to the Court.

10 THE COURT: The forfeiture order includes a payment
11 schedule.

12 MR. BEATY: No, I'm sorry. Restitution order that you
13 mentioned. Proposed orders for both were submitted in advance
14 to the Court.

15 THE COURT: Okay. Well, thank you. So, you submitted
16 a proposed forfeiture order and a proposed restitution order?

17 MR. BEATY: That's correct, your Honor.

18 THE COURT: And the only difference on the proposed
19 restitution order is the payment schedule?

20 MR. BEATY: That's my understanding, although I have
21 not discussed the form of the order with Mr. Dratel. It was
22 submitted to him at the same time it was submitted to the
23 Court. So I don't know whether he has any objections to the
24 form.

25 MR. DRATEL: Just the 20 percent, your Honor. That's

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1 paragraph three of the restitution order. We object to the
2 20 percent.

3 THE COURT: Okay.

4 MR. DRATEL: Thank you, your Honor.

5 THE COURT: I intend to do 10 percent of the
6 defendant's gross monthly income per month beginning 30 days
7 after release from incarceration. So the order with that
8 change is mutually agreed on.

9 Have you put it on ECF? Because I can just download
10 it from ECF.

11 MR. BEATY: It was submitted by e-mail to chambers. I
12 believe it was also put on ECF, but as I stand here today I'm
13 not entirely sure. It was certainly submitted by e-mail to
14 chambers.

15 THE COURT: We'll try and retrieve it from e-mail.

16 MR. BEATY: I'm happy to bring a hard copy if the
17 Court would like later today.

18 THE COURT: That would be fine.

19 MR. BEATY: Okay.

20 THE COURT: Does the government have any objections?
21 Has the government reviewed the presentence report and the
22 addendum?

23 MR. BEATY: Yes, your Honor, and have no objections.

24 THE COURT: All right. I'll listen to you for
25 anything you would like to tell me in connection with sentence,

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1 any statement you'd like to make, anything at all you'd like to
2 tell me.

3 MR. BEATY: Yes, your Honor. Just briefly, this
4 defendant was involved with a very large fraud scheme for the
5 entirety of the two years that were investigated. From
6 January 2012 through December 2013, he was involved in both the
7 rental fraud scheme and the EBT fraud scheme. He, in that
8 fraud, he played a managerial role. He recruited others, he
9 coordinated putting money on EBT cards, he coordinated in
10 making purchases with those cards, fencing the items that were
11 bought, and ultimately turning the benefits into cash.

12 He's only one of three defendants in this entire
13 12-defendant case that has warranted an enhancement for the
14 role that he played. He's also, after Cherrise Watson-Jackson,
15 the second defendant in terms of loss amount that was
16 foreseeable to him.

17 His involvement was at a very high level in this
18 scheme. He's not someone who simply got recruited and caught
19 up. He's someone who for a long period of time played an
20 integral role in the scheme. And we think, your Honor, that
21 his sentence should reflect that role. And for that reason, a
22 sentence at the top of the guidelines is warranted.

23 Separate and apart from that, a sentence at the top of
24 the guidelines range is warranted because of the defendant's
25 criminal history. The specific deterrence here is I think more

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1 important than it is in many cases, because of the defendant's
2 long criminal history. When he committed the crimes that he's
3 pled to here, he had just gotten out of jail for a nine-year
4 term. He was on parole. And nearly immediately began again
5 committing crimes. He's continued to commit crimes --

6 THE COURT: He served seven years on his nine-year
7 term when he was released from state custody, I think. Right?

8 MR. BEATY: I believe that's right. I don't have the
9 exact date that he was released.

10 THE COURT: It's in the presentence report. And then
11 he violated his parole.

12 MR. BEATY: That's correct, your Honor. He violated
13 his parole I believe three times after he was initially paroled
14 in September of 2010. Paragraph 58 of the PSR.

15 THE COURT: Right.

16 MR. BEATY: In addition to those three parole
17 violations, this case reveals that he was also separately
18 violating his parole by committing the crimes that are charged
19 here. The nine years or the seven years and the additional
20 time that he served for the parole violations did not deter him
21 from continuing to commit crimes.

22 Indeed, he has pending state charges that involve both
23 possession of a forged instrument as well as firearms charges.
24 This is not an isolated incident in which specific deterrence,
25 you know, perhaps the argument could be made specific

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1 deterrence can be achieved through a small sentence. The
2 government submits that a sentence at the top of the guidelines
3 range will send a strong message to the defendant that ongoing
4 criminal activity will not be tolerated.

5 In terms of the consecutive versus concurrent sentence
6 as to the state charge, for the reasons stated in the
7 government's submission, the government believes that that
8 should be consecutive. The state charge is entirely unrelated
9 to this case here and involves guns. And the government
10 submits that any deterrent effect as to this case should be
11 imposed consecutively.

12 At the same time, given the Court's comments, the
13 government would ask that the Court at least not impose this
14 sentence concurrently. At the very least, to not say which way
15 the Court is going, and leave that up to the state court.

16 Unless the Court has any further questions, the
17 government will rely on its submission.

18 THE COURT: All right. Thank you.

19 MR. DRATEL: Your Honor, may I just?

20 THE COURT: Yes, Mr. Dratel.

21 MR. DRATEL: Thank you. In addition to all, he's also
22 the first defendant to plead guilty in this case and accept
23 responsibility.

24 THE COURT: I'm sorry?

25 MR. DRATEL: He was also the first defendant to plead

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1 guilty in this case and accept responsibility and to resolve
2 this case. Also, you know, all of these issues are already
3 factored into the guidelines. So for example, his criminal
4 history, instead of -- if his criminal history were I, he would
5 be 30 to 37 months. If he did not get a leadership role, he
6 would be at 21 to 27 months. All these things are already
7 factored in, so they shouldn't raise his sentence above the
8 minimum of the guidelines.

9 If you look at the vast distribution of sentences in
10 this district, in this circuit, and the trend even nationally
11 now for the first time, we have the guidelines being a minority
12 of cases. That it would be more than sufficient and certainly
13 greater than necessary to go beyond that.

14 Thank you, your Honor.

15 THE COURT: Thank you, Mr. Dratel. I'll place the
16 presentence report, the recommendation, and the addendum in the
17 record under seal along with the parties' submissions. The
18 parties should make sure that their submissions are in the
19 record after redacting any personal identifying information. I
20 see that the government's submission already is in the record,
21 the defendant's June 23 submission is in the record. I'm not
22 sure if the defendant's original submission is in the record.
23 If it isn't, the defendant should put it in the record after
24 redacting the personal identifying information.

25 I adopt the findings of fact in the presentence

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1 report. Therefore, I conclude that under the current
2 guidelines the total offense level is 19, the criminal history
3 category is III, and the guideline sentencing range is 37 to 46
4 months.

5 I appreciate that the guidelines are only advisory,
6 and that the Court must consider the various sentencing factors
7 in 18 U.S.C. Section 3553(a) and impose a sentence that is
8 sufficient, but no greater than necessary, to comply with the
9 purposes set forth in Section 3553(a)(2).

10 In this case, the offense is egregious. While it is a
11 fraud offense, and it did not involve violence or controlled
12 substances, it was fraud involving two public welfare programs.
13 It involved fraud against a public agency whose objective is to
14 assist those in need of assistance. It stole from funds that
15 should have been used to assist the poor.

16 Moreover, the amounts involved in the offense were
17 significant. The offense was all the more serious because it
18 was committed while the defendant was on parole from a serious
19 robbery conviction in the state system. Soon after the
20 defendant was released from a long term of imprisonment in the
21 state system, he engaged in the current scheme.

22 Therefore, there are significant reasons that a
23 significant sentence is needed for purposes of personal
24 deterrence and protection of the public, as well as recognizing
25 the seriousness of the offense.

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1 The defendant points to his difficult childhood and
2 his support from family members. But neither of those factors
3 are sufficient to mitigate the need for a significant sentence
4 to accomplish the needs of sentencing.

5 The government asks for a sentence at the top of the
6 advisory guideline range, and one which is consecutive to the
7 sentence that the defendant may face for the state court
8 charges that he is currently facing.

9 This is a case where, taking all of the factors into
10 account, a sentence of 37 months on Count One is sufficient,
11 but no greater than necessary, to accomplish all of the goals
12 of sentencing, to be followed by a three-year term of
13 supervised release with the standard conditions of supervised
14 release in this district and those recommended by the probation
15 department.

16 In arriving at a sentence of 37 months, the Court
17 takes into account the mitigating factors that the defendant
18 has relied upon. The Court is aware of the defendant's
19 physical condition. The Court is aware of the difficulties of
20 treatment within the prison system. The Court is aware of the
21 defendant's difficult background. Nevertheless, the sentence
22 of 37 months is sufficient, but no greater than necessary, to
23 accomplish the goals of sentencing.

24 The Court will not impose a fine because the defendant
25 lacks the ability to pay a fine, after taking into account the

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1 presentence report. The Court will impose a \$100 special
2 assessment.

3 The Court will impose restitution in the amount of
4 \$291,550 payable to the New York City Human Resources
5 Administration. Restitution is payable at the rate of
6 10 percent of the defendant's gross monthly income beginning 30
7 days after release from imprisonment. Restitution is payable
8 joint and severally with all other others responsible for the
9 loss.

10 Defendant will also forfeit \$437,325 to the
11 government. Forfeiture is also joint and several with all
12 others responsible for the loss.

13 The Court will recommend incarceration in the New York
14 City area so that the defendant can be close to his family.
15 The Court will also recommend that the defendant be admitted to
16 the intensive Residential Substance Abuse Treatment Program of
17 the bureau of prisons.

18 With respect to the government's request that the
19 Court order that the sentence be consecutive to the defendant's
20 prospective state court conviction, the Court declines to do
21 so. The Court will not make a recommendation at this time as
22 to whether the federal sentence should be concurrent or
23 consecutive to the state court sentence.

24 The Court is prepared, of course, to respond to any
25 inquiries from the bureau of prisons with respect to the

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1 service of the defendant's federal sentence. The defendant has
2 not yet been convicted in state court, and may not be sentenced
3 to any time in the state court, in which case the defendant
4 will have served time for which the defendant should be
5 credited toward his federal sentence.

6 If the defendant is eventually sentenced in state
7 court, it will be for the state court judge to determine in the
8 first instance whether the state sentence should be concurrent
9 or consecutive to the federal sentence. Concurrent or in
10 addition to the federal sentence, and to arrive at the
11 appropriate way for the service of the sentence.

12 The state court judge will be in the best position to
13 determine such things as the total amount of time that the
14 defendant would face from the federal and from the state
15 sentence. Even though the crimes are separate, the court could
16 not ignore the total amount of time of incarceration that would
17 be imposed on the defendant. The state court judge will have
18 to determine in the first instance what additional, if any,
19 incarceration is appropriate for the fact that, if the
20 defendant is being sentenced in state court, what additional
21 time is necessary for the state court charge.

22 Therefore, the Court will not make a recommendation at
23 this time with respect to whether the federal sentence should
24 be concurrent or consecutive to the state court sentence. But
25 of course, the Court would respond to any inquiries from the

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1 bureau of prisons.

2 The sentence is consistent with the factors in Section
3 3553(a), and is sufficient but no greater than necessary to
4 comply with the purposes of Section 3553(a)(2). It recognizes
5 the seriousness of the offense and the need for deterrence and
6 protection of the public. It fully takes into account all of
7 the mitigating circumstances advanced by the defendant.

8 I've explained the reasons for the sentence. Before I
9 actually impose the sentence, Mr. Dratel, I'll recognize you
10 for anything you wish to tell me.

11 MR. DRATEL: Nothing, your Honor. Thank you.

12 THE COURT: Mr. Williams, before I actually impose the
13 sentence, I'll recognize you for anything you wish to tell me,
14 anything you'd like to say in your own behalf, anything at all
15 you'd like to tell me.

16 THE DEFENDANT: No, thank you, your Honor.

17 THE COURT: Mr. Beaty, I'll recognize you for anything
18 the government wishes to tell me.

19 MR. BEATY: Nothing, your Honor. Thank you.

20 THE COURT: All right. Pursuant to the Sentencing
21 Reform Act of 1984, it is the judgment of this Court that the
22 defendant, Derrick Williams, is hereby committed to the custody
23 of the bureau of prisons to be imprisoned for a term of 37
24 months on Count One.

25 I recommend incarceration in the New York City area so

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1 that the defendant can be close to his family. I recommend
2 that the defendant be admitted to the intensive Residential
3 Substance Abuse Treatment Program of the bureau of prisons.

4 Upon release from imprisonment, the defendant shall be
5 placed on supervised release for a term of three years. Within
6 72 hours of release from the custody of the bureau of prisons,
7 the defendant shall report in person to the probation office in
8 the district to which the defendant is released.

9 While on supervised release, the defendant shall
10 comply with the standard conditions of supervised release in
11 this district. The defendant shall not commit another federal,
12 state, or local crime; the defendant shall not possess a
13 firearm or destructive device as defined in 18 U.S.C. Section
14 921; the defendant shall refrain from any unlawful use or
15 possession of a controlled substance. The defendant shall
16 submit to one drug test within 15 days of release from
17 imprisonment, and at least two periodic drug tests thereafter
18 as directed by the probation officer. The defendant shall
19 cooperate in the collection of DNA as directed by the probation
20 officer.

21 The defendant will participate in an outpatient
22 treatment program approved by the United States probation
23 office, which program may include testing to determine whether
24 the defendant has reverted to the use of drugs or to alcohol.
25 The defendant shall contribute to the cost of services rendered

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1 based on the defendant's ability to pay and the availability of
2 third-party payments. The Court authorizes the release of
3 available drug treatment evaluations and reports, including the
4 presentence investigation report, to the substance abuse
5 treatment provider.

6 The defendant shall provide the probation officer with
7 access to any requested financial information. The defendant
8 shall incur no new credit charges or open additional lines of
9 credit without the approval of the probation officer, unless
10 the defendant is in compliance with the installment payment
11 schedule.

12 The defendant shall submit his person, residence,
13 place of business, vehicle, or any other property or electronic
14 devices under his control to a search on the basis that the
15 probation officer has reasonable suspicion that contraband or
16 evidence of a violation of the conditions of the defendant's
17 supervised release may be found. The search must be conducted
18 at a reasonable time and in a reasonable manner. Failure to
19 submit to a search may be grounds for revocation. The
20 defendant shall inform any other residents that the premises
21 may be subject to search pursuant to this condition.

22 The defendant shall notify the United States attorney
23 for this district within 30 days of any change of mailing or
24 residence address that occurs while any portion of the
25 restitution remains unpaid.

G6O3WILS

Sentence

1 The defendant shall pay restitution in the amount of
2 \$291,550 payable to the New York City Human Resources
3 Administration. Restitution is payable at the rate of
4 10 percent of the defendant's gross monthly income beginning 30
5 days after release from incarceration. Restitution is joint
6 and several with any others responsible for the loss.

7 The defendant shall pay forfeiture in the amount of
8 \$437,325. Forfeiture is also joint and several with any other
9 persons responsible for the loss.

10 It is further ordered that the defendant shall pay to
11 the United States a special assessment of \$100 which shall be
12 due immediately.

13 I've already explained the reasons for the sentence.
14 Does either counsel know of any legal reason why the sentence
15 should not be imposed as I've so stated it?

16 MR. BEATY: No, your Honor.

17 MR. DRATEL: No, your Honor.

18 THE COURT: All right. I'll order the sentence to be
19 imposed as I've so stated it for all the reasons that I've
20 explained.

21 There is a waiver of the right to appeal the sentence,
22 yes?

23 MR. BEATY: Yes, your Honor.

24 THE COURT: Does either counsel know of any legal
25 reason why the waiver is not effective?

G603WILS

Sentence

1 MR. BEATY: I do not, your Honor.

2 MR. DRATEL: No, your Honor.

3 THE COURT: Mr. Williams, the reason that I ask these
4 questions is that, generally, a defendant has the right to
5 appeal the sentence. The notice of appeal must be filed within
6 14 days after the entry of the judgment of conviction. The
7 judgment of conviction is entered promptly after the judge
8 announces the sentence. So, you should discuss this issue
9 promptly with your lawyer. If the defendant cannot pay the
10 cost of appeal, the defendant has the right to apply for leave
11 to appeal in forma pauperis. If the defendant requests, the
12 clerk will prepare and file a notice of appeal on the
13 defendant's behalf immediately. And the rules require that a
14 judge inform the defendant of this right to appeal.

15 Now, in this case, the parties tell me that you had
16 given up or waived your right to appeal the sentence. So it
17 appears that you have waived your right to appeal the sentence.
18 But, I go over this with you now because I want to make sure
19 that you talk about this with your lawyer so that you're fully
20 informed of all of your rights. Do you understand what I've
21 said?

22 THE DEFENDANT: Yes, sir.

23 THE COURT: Okay. Open counts?

24 MR. BEATY: There are none, your Honor. But in an
25 excess of caution, the government moves to dismiss any open

G603WILS

Sentence

1 counts against the defendant.

2 THE COURT: Right. And the defendant agrees?

3 MR. DRATEL: Yes, your Honor.

4 THE COURT: All open counts against the defendant are
5 dismissed on the motion of the government. Anything else?

6 MR. BEATY: Not from the government, no, your Honor.

7 MR. DRATEL: No, your Honor. Thank you.

8 THE COURT: Okay. Good morning, all.

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